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| APPLICATION NO.                  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------------|-------------|----------------------|---------------------|------------------|
| 10/720,755                       | 11/25/2003  | Jean-Pierre Kocher   | KOC-0005/CON        | 2772             |
| 23353                            | 7590        | 04/25/2005           | EXAMINER            |                  |
| RADER FISHMAN & GRAUER PLLC      |             |                      | LABAZE, EDWYN       |                  |
| LION BUILDING                    |             |                      | ART UNIT            |                  |
| 1233 20TH STREET N.W., SUITE 501 |             |                      | PAPER NUMBER        |                  |
| WASHINGTON, DC 20036             |             |                      | 2876                |                  |

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

ATK

|                              |                               |                                     |  |
|------------------------------|-------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/720,755 | Applicant(s)<br>KOCHER, JEAN-PIERRE |  |
|                              | Examiner<br>EDWYN LABAZE      | Art Unit<br>2876                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27, 29-42 and 44-56 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 27, 29-42 and 44-56 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Receipt is acknowledged of amendments filed on 4/4/2005.
2. Claims 27, 29-42, and 44-56 are presented for examination.
3. This application is a continuation of application 09/635,856 filed on 8/11/2000 (now U.S. 6,652,455), which claims the benefits of application No. 60/148,676 filed on 8/13/1999.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 27, 29-42, and 44-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goetz (U.S. 6,397,190) in view of Palti (U.S. 5,700,998).

Re claims 27, 32-35, 42, and 47-50: Goetz discloses veterinary medication monitoring system and apparatus, which includes storing [through a memory 14] the product information within an items database, the items database being disposed within a remote computer 18 (col.4, lines 19+), storing user data within a profile database, the user data being information about the user, the profile database being located within the remote computer 18 (as shown in figs. # 9-13; col.10, lines 65-67; col.11, lines 1+); storing profile data within the profile database, the profile data being information about interactions between the foods and medicines (col.12, lines 17-67; col.13, lines 1-39), entering packaging data into an input device 12 [through input buttons 20, 22, and 26], the input device 12 being separate and distinct from the remote computer 18, the input

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device being portable, the packaging data being additional information pertaining to the product (col.4, lines 37+; col.7, lines 45+); searching [through a query 60] the items database for the product information, the input device 12 using the packaging data to search the items database for the product information (col.7, lines 60-67; col.8, lines 1-67). Goetz further discloses that the product information includes product name (col.7, lines 11+), product, chemicals contained with the product (col.17, lines 3+; col.17, lines 60+; col.18, lines 1+); produce suggested serving size [such as ½ tablet; 50 mg; 2 x daily; as shown in figs. # 29-30]; nutrients contained with the product (col.8, lines 35+). Goetz also discloses coding techniques/features and data encryption (col.5, lines 22+; col.6, lines 20+).

Goetz fails to teach the product information includes barcode numbers, wherein the input device is an optical scanner, wherein the product includes indicia for describing the product, wherein the indicia being a bar code and the optical scanner entering the packaging data into the input device by scanning the text.

Palti discloses drug coding and delivery system, which includes product information in the form of a barcode 53 (as shown in fig. # 1-4; col.4, lines 10-55), an optical bar code reader/scanner (as shown in fig.# 11) for reading the coded pills (col.5, lines 45+).

In view of Palti's teachings, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to employ product information in the form of barcode numbers into the teachings of Goetz as a means of identifying the product/drug. Furthermore, such modification is well known in the art [as exemplified by the examiner, see U.S. 5,971,277 of Cragun et al.] by encoding product/profile data/information in a format readable [containing related information pertinent to the product; such as name, type, manufacturer/producer, dosage

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of the drug, chemical components, location/storage place and the like] by scanner [with encoding/writing and decoding/reading means] so as to identify a product, and add or delete a product on a database. Moreover, such modification would have been an obvious extension as taught by Goetz, therefore an obvious expedient.

Re claims 29 and 44: Goetz teaches a system and method, further comprising means of display the product information on a display 26 [herein being a LCD], the display being located on the input device 12 (as shown in figs. # 2 and 22-43; col.8, lines 30+; col.18, lines 31+).

Re claims 30-31 and 45-46: Goetz discloses a system and method, retrieving the product information from the items database, the input device retrieving the product information from the items database and comparing the received product information with the profile data; and further comprising warning the user of possible allergy or incompatibility to said product, the warning being based upon a result of the step of comparing (col.15, lines 55-67; col.16, lines 1-67).

Re claims 36-41 and 51-56: Goetz teaches a system and method, wherein the items database or the profile database [wherein the profile database contains identification information related to the owner/user as disclosed in col.6, lines 55+] is a removable storage medium 14 [herein described as a smart card], disposed on the input device 12 or the remote computer 18 (as shown in figs. # 1-3; col.4, lines 15-35; col.6, lines 1-67).

### *Response to Arguments*

6. Applicant's arguments filed 4/4/2005 have been fully considered but they are not persuasive.

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The applicant argues that there is no motivation that the pill coding in Palti (U.S. 5,700,998) should be used in the system of Goetz (U.S. 6,397,190) without a hindsight use of the applicant's specification (see applicant's remarks; pages 8-9).

The examiner respectfully disagrees with the applicant's remarks for the following reasons. The applicant fails to respond why it would not be obvious to one skilled in the art to modify the pill coding of Palti into the system of Goetz. Furthermore, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references {In re Nomiya, 184 USPQ 607 (CCPA 1975)}. However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art, {In re McLaughlin, 170 USPQ 209 (CCPA 1971)}, and wherein references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures {In re Bozek, 163 USPQ 545 (CCPA 1969)}. In the case, the examiner retains the rejection as set forth in paper No. 11022004 and above.

Furthermore, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill in the time the claimed invention was made, and does not include knowledge

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gleaned only from the applicant's disclosure, such reconstruction is proper {In re McLaughlin, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971)}.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chaco (U.S. 5,465,082) teaches apparatus for automating routine communication in a facility.

Cragun et al. (U.S. 5,804,803) discloses mechanism for retrieving information using data encoded on an object.

Bukowski (U.S. 6,588,670) teaches medical diagnostic monitoring.

Evans et al. (U.S. 6,685,678) discloses drug delivery and monitoring system.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDWYN LABAZE whose telephone number is (571) 272-2395. The examiner can normally be reached on 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

el  
Edwyn Labaze  
Patent Examiner  
Art Unit 2876  
April 12, 2005



**THIEN M. LE**  
**PRIMARY EXAMINER**